

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY _____ DEPUTY

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

PLAINTIFF,

V.

LUMINANT MINING SERVICES
COMPANY, LUMINANT HOLDING
COMPANY LLC, AND
ENERGY FUTURE HOLDINGS CORP.,
DEFENDANTS.

CIVIL NO. A-12-CA-895-LY

ORDER TRANSFERRING CASE

Before the Court in the above styled and numbered cause is Defendants’ Luminant Mining Services Company, Luminant Holding Company, LLC, and Energy Future Holdings Corp.’s (“Defendants”) Motion To Transfer Venue to the Waco Division filed November 2, 2012 (Clerk’s Document No. 12). Plaintiff the Equal Employment Opportunity Commission (“EEOC”) commenced this employment action on behalf of James Tarver, who was employed by Luminant Mining Services Company at the Kosse Mine, located in the City of Kosse, Texas. Kosse is located in Limestone County, Texas, which is one of the 13 counties that comprise the Waco Division of the United States District Court for the Western District of Texas. The alleged conduct at issue and the decisions made with regard to Tarver’s employment occurred within the Waco Division, specifically, in Kosse. Defendants move the court to transfer this action to the Waco Division for the convenience of the parties and in the interest of justice. *See* 28 U.S.C. § 1404(a).

The EEOC's response to Defendants' motion to transfer venue to the Waco Division was due November 9, 2012. *See* Loc. R. W.D. Tex. CV-7(e)(2) (requiring party opposed to nondispositive motion to file response within seven days of service of motion and allowing district court to grant

motion as unopposed if no timely response is filed). As of this date, the EEOC has not responded to Defendants' motion. Pursuant to Local Rule CV-7(e)(2), Defendants' motion may be granted as unopposed, if review of the pleadings reveals that the motion should be granted. *See cf. John v. Louisiana Bd. of Trs. for State Colls. & Univs.*, 757 F.2d 698, 707–10 (5th Cir. 1985).

The Defendants contend that all of the alleged conduct at issue in this case and the decisions made with regard to James Tarver's employment occurred in Kosse. The witnesses identified by Defendants work and live in or near Kosse, the relevant documents are located in Kosse, and the events giving rise to this action occurred in Kosse. On the other hand, there is nothing on the face of the pleadings that would suggest that venue is convenient in Austin, or that Austin has any factual nexus with matters in this action. Having considered each of the public and private factors for the determination of whether a venue transfer is proper, the court holds that transfer of this action to the Waco Division is proper for the convenience of the parties and witnesses. *See In re Volkswagen*, 545 F.3d 304, 311-18 (5th Cir. 2008) (en banc).

Having considered Defendants' motion and sworn affidavit from Ashley Stanfield, the Human Resources Coordinator at the Kosse Mine where James Tarver worked during his employment with Luminant Mining Services Company, the case file, the applicable law, and in light of the lack of a response to the motion, the court finds that jurisdiction and venue of this action is proper in the Waco Division. Further the court holds that for convenience of the parties and in the interest of justice, the court will transfer this action to the Waco Division.

IT IS ORDERED that Defendants' Luminant Mining Services Company, Luminant Holding Company, LLC, and Energy Future Holdings Corp.'s Motion To Transfer Venue to the Waco Division filed November 2, 2012 (Clerk's Document No. 12) is **GRANTED**.

FINALLY IT IS ORDERED that the Clerk of Court forward the file to the United States District Court for the Western District of Texas, Waco Division.

SIGNED this 20th day of November, 2012.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE